

Message Text

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ACTION NEA-10

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CINCPAC

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CINCPAC FOR POLAD

E.O. 11652: N/A
TAGS: PINT, PGOV, IN
SUBJECT: CONFLICT OVER STATE ELECTIONS

REF: NEW DELHI 5786

1. IN A UNANIMOUS DECISION, THE SUPREME COURT ON APRIL 29
DISMISSED AN APPEAL BROUGHT BY SEVERAL CONGRESS STATE
GOVERNMENTS TO RESTRAIN THE CENTRAL GOVERNMENT FROM DIS-
SOLVING THEIR STATE ASSEMBLIES. THE COURT WILL ISSUE ITS
REASON FOR DISMISSAL ON MAY 6. FOLLOWING IS BACKGROUND TO THE
SUIT.

2. ON APRIL 18, HOME MINISTER CHARAN SINGH ISSUED AN "APPEAL"
TO THE CHIEF MINISTERS OF NINE CONGRESS-RULED STATES TO
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ADVISE THEIR GOVERNORS TO DISSOLVE THE STATE ASSEMBLIES
AND CALL FRESH ELECTIONS (REFTEL). HE SAID THAT SINCE THE
JANATA HAD SWEEPED THE LOK SABHA POLL IN THESE STATES, THE
CONGRESS GOVERNMENTS HAD LOST THEIR POPULAR MANDATE. THE
CHIEF MINISTERS SUMMARILY REJECTED THE "APPEAL". HOURS BEFORE
DESAI'S CABINET WAS SCHEDULED TO MEET ON APRIL 25--PRESUMABLY
TO ASK THE ACTING PRESIDENT TO DECLARE PRESIDENT'S RULE IN

THE TARGETTED STATES--THE GOVERNMENTS OF FOUR (BIHAR, MADHYA PRADESH, PUNJAB AND RAJASTHAN) FILED SUITS IN THE SUPREME COURT TO BLOCK THE ANTICIPATED ACTION. SPECIFICALLY, THEY ASKED THE COURT TO CONDUCT A FULL-FLEDGED HEARING ON THE "CONSTITUTIONALITY" OF THE HOME MINISTER'S APRIL 18 APPEAL, WHICH THEY LIKENED TO A "DIRECTIVE". IN THE INTERIM, THEY ALSO ASKED THE COURT TO ISSUE AN INJUNCTION RESTRAINING THE GOVERNMENT FROM TAKEING ANY ACTION REGARDING THE DISSOLUTION OF THE ASSEMBLIES UNTIL THE HEARING WAS CONCLUDED. THE CABINET QUICKLY RESOLVED TO DEFER ANY ACTION ON THE DISSOLUTION QUESTION UNTIL THE SUPREME COURT HAD RULED ON THE CONGRESS SUITS.

3. THE COURT'S DECISION NOW APPEARS TO PERMIT THE GOVERNMENT TO PROCEED WITH DECLARING PRESIDENT'S RULE UNDER ARTICLE 356. WE UNDERSTAND THAT THE CABINET MAY MEET LATER THIS AFTERNOON (APRIL 29). ACCORDING TO THE 39TH AMENDMENT, SUCH AN ACTION CANNOT BE CHALLENGED IN COURT. THE EFFECT OF THE CONGRESS' RECOURSE TO THE SUPREME COURT HAS BEEN TO SLIGHTLY DELAY THE GOVERNMENT'S TIMETABLE FOR HOLDING ASSEMBLY ELECTIONS BEFORE THE ONSET OF THE MONSOON. THE COURT'S DECISION REPRESENTS AN IMPORTANT TACTICAL VICTORY FOR THE NEW GOVERNMENT: THE GOI CAN NOW ATTEMPT TO GAIN CONTROL OF NUMEROUS STATE GOVERNMENTS BEFORE THE PRESIDENTIAL ELECTION. IN ADDITION, JANATA WILL NOW BE ABLE TO ANSWER CONGRESS CHARGES THAT ITS DISSOLUTION OF THE ASSEMBLIES WAS ILLEGAL BY POINTING OUT THAT IT HAD BEEN EFFECTIVELY SANCTIONED BY THE SUPREME COURT.

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4. ONE REMAING QUESTION INVOLVES WHICH STATE ASSEMBLIES WILL BE DISSOLVED. CHARAN SINGH ORIGINALLY BASED HIS ARGUMENT FOR DISSOLUTION ON THE "MORAL" GROUNDS THAT THE CONGRESS GOVERNMENTS IN THE NINE STATES HAVE NO FURTHER RIGHT TO CONTINUE IN POWER AS A RESULT OF THE JANATA SWEEP IN MARCH. ACCORDING TO RECENT PRESS REPORTS, THE GOVERNMENT MAY BE HAVING SECOND THOUGHTS ON THE SUFFICIENCY OF SUCH A JUSTIFICATION. RATHER, IT MAY ULTIMATELY DECIDE TO RELY ON A MORE "CONSTITUTIONAL" ARGUMENT TO THE EFFECT THAT THE ONE-YEAR EXTENSION OF ALL STATE ASSEMBLY TERMS (FIVE TO SIX YEARS) UNDER THE 42ND AMENDMENT WAS UNCONSTITUTIONAL, BECAUSE THE BILL WAS PASSED BY AN UNCONSTITUTIONALLY PROLONGED LOK SABHA. THUS, ALL ASSEMBLIES ELECTED IN THE SPRING 1972 BY-ELECTION WOULD BE DEEMED TO HAVE AUTOMATICALLY EXPIRED. IF THE GOVERNMENT OPTS FOR THIS FIVE-YEAR RULE AS ITS JUSTIFICATION FOR DISSOLVING ASSEMBLIES AND IMPOSING PRESIDENT'S RULE, STATE ELECTIONS COULD BE HELD IN MOST STATES SOMETIME THIS JUNE. THE ASSEMBLIES OXBTWBQOF THE ORIGINAL NINE TARGETTED STATES, U.P. AND ORISSA, WERE ELECTED IN 1974

AND PRESUMABLY WOULD BE LEFT ALONE. ON THE OTHER HAND, AN
EVEN-HANDED APPLICATION OF THE FIVE-YEAR RULE WOULD ALSO
REQUIRE NEW ELECTIONS IN STATES WHERE CONGRESS FARED WELL
IN THE LOK SABHA POLL: ANDHRA PRADESH, ASSAM, KARNATAKA AND
MAHARASHTRA. IN ADDITION, TAMIL NADU, PONDICHERRY AND NAGALAND,
ALL CURRENTLY UNDER PRESIDENT'S RULE, MAY ALSO GO TO THE
POLLS IN JUNE. JAMMU AND KASHMIR HAS ALREADY SCHEDULED
ELECTIONS FOR JUNE.
SCHNEIDER

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